

**USING ZONING AS
INCENTIVE TO RETROFIT**

Local land use controls can be used to help reduce earthquake hazards. Incentives as well as controls on changes in building occupancy can complement both mandatory and voluntary unreinforced masonry building (URM) retrofitting ordinances. Typically, zoning is viewed in negative terms by many building owners because they perceive the emphasis is "thou shall not" Planning Commissions and zoning administrators often reinforce this perception during the development review process, and public-private partnerships rarely are fostered through zoning. However, this relationship can change if zoning ordinances are used in a positive manner to implement General Plan policies by offering bonuses and other types of incentives to achieve specific public purposes. Notable examples include the density bonuses for affordable housing and transfer of development rights for historic preservation. Lessons learned from these programs may help local governments design similar initiatives to encourage property owners to retrofit and upgrade their hazardous buildings.

Where potential funding sources are limited and, due to bond issuance costs, the advantages of municipal borrowing are perceived as not that much more attractive than private credit, local governments may want to explore how zoning mechanisms can be structured to create specific incentives for retrofitting seismically-unsafe structures. In the preceding chapters, the CASE STUDIES and PROGRAM HIGHLIGHTS show that funding incentives alone may not be sufficient to ensure widespread program participation. Time limits on retrofitting have proven to be effective, particularly when combined with priority ranking systems. Any and all programs can be complemented by zoning incentives, which also could have time limits attached to them in order to reinforce the need to act.

TYPES OF INCENTIVES

As part of a voluntary retrofit program, or to make a mandatory upgrading program more attractive, five general types of incentives to facilitate seismic upgrading of URMs and other potentially hazardous buildings may be appropriate for local zoning ordinances:

- Density/intensity bonuses;
- Transfer of development rights;
- Reduction in development standards;
- Relief from nonconforming provisions; and
- Restrictions on new occupancy of a potentially hazardous URM or other potentially hazardous building.

Each of these incentives is described more specifically below; choice of the right "incentive package" should be based on local conditions and needs. To show how these provisions might be combined into a comprehensive package, an approach to implementing a zoning incentive program is attached. This can be used as a guide in designing local programs.

DENSITY/INTENSITY BONUSES

Where a number of URMs contribute to the historical or architectural character of a district or area, a city may want to offer specific increases in the maximum allowable building density or intensity to help offset the added costs of seismic upgrades. To encourage affordable housing, for example, the State requires that a 25% density bonus be provided, recognizing that the cost of providing such housing is greater than the cost of providing market-rate housing. Similarly, a number of communities allow taller or larger buildings if pedestrian amenities, such as plazas, are provided, or if parking is placed underground.

Within each zoning district, similarly-situated properties need to be equally treated so such provisions are not considered "spot zoning." To provide a strong legal foundation for this type of incentive, a community's General Plan policies should specifically identify the purposes to be achieved by a density/intensity bonus program (e.g. "to encourage seismic upgrades and conserve and enhance the community's historic and architectural resources"). The actual standards that would apply should be based on construction cost analysis and urban design and planning studies. As a starting point, local planners should consult the State of California Seismic Safety Commission's *Guidebook to Identify and Mitigate Seismic Hazards in Buildings*. (See: CONTACTS)

A density/intensity incentive program is more likely to work only where the base zoning "envelope" does not provide for substantial development potential but, instead, is geared to maintaining the existing scale of development. Where the zoning envelope is generous, there would be little incentive to participate in the retrofitting program.

TRANSFER OF DEVELOPMENT RIGHTS (TDR)

The rationale for allowing a property owner to transfer unused development rights to another site is based on the concept that there is a public purpose to be achieved in requiring a seismic upgrade, and the existing use of the building may not generate sufficient income to justify the retrofitting costs. TDR is particularly suited to designated or certified historic

structures where no intensification of use is contemplated or even allowed. Restrictions of the right of transfer could be imposed. For example, transfers might only be allowed to adjacent lots within the same zoning district, or they could be permitted to any lot within the same zoning district, or to lots in specific zones where intensification of development is envisioned. The value of the development right to be transferred should approximate the cost of the retrofitting, so again careful analysis of construction costs is needed as a basis for designing an equitable and effective TDR program.

REDUCTION IN DEVELOPMENT STANDARDS

As with the preceding incentives, the objective of allowing for a minor reduction in certain specified building or site development standards would be to offset the added costs associated with retrofitting older structures. Seismically safe structures offer obvious public benefits, so there is some justification for allowing for reduced standards. Again, though, the challenge will be to tie the reduction in standards to the upgrade cost, so a "windfall" is not created, and after paying for the costs of upgrading, owners of URM's face the same requirements as owners of newer buildings.

Provisions for a reduction in development standards should include a specific requirement that the reduction is necessary to meet building standards for seismic safety. Specific restrictions could apply, such as no increase in building height. A time limit could be set, requiring applications for a reduction in development standards to be submitted within a specified period of time following adoption of the zoning incentive program, to coincide with State or local time limits for upgrading URM's.

RELIEF FROM NONCONFORMING PROVISIONS

Because many URM's were built before current zoning ordinances were adopted, they may not conform to the development standards that now apply to new construction. For example, there may not be any on-site parking and the setbacks may be less than are now required of new construction. Most zoning ordinances state that such nonconforming structures may not be altered or enlarged unless the alteration or enlargement will result in the elimination of the nonconformity.

To provide relief from these nonconforming provisions, the following exemptions may be made for alterations or enlargements for purposes of seismic upgrade.

- (1) Exterior or interior alterations or improvements may be allowed for purposes of retrofitting a structure occupied by a nonconforming use to meet building standards for seismic safety (*add appropriate reference to code or ordinance requirements*) without elimination of the nonconformity, provided there is no expansion of the use (*or an expansion not to exceed _____ percent*).
- (2) A nonconforming structure may not be altered or reconstructed so as to increase the discrepancy between existing conditions and the standards for front yard, side yard, rear yard, height of structure, driveways, or usable open space prescribed in the regulations for the district in which the structure is located unless such alteration or reconstruction is specifically required to meet local building standards for seismic safety (*add appropriate reference to code or ordinance requirement*).

NEW OCCUPANCY OF A URM
OR OTHER POTENTIALLY HAZARDOUS BUILDING

A zoning ordinance could require that any applicant for a discretionary zoning permit for occupancy of a URM, or of another potentially hazardous structure that does not conform to current building code standards for seismic safety, present a schedule for upgrading the structure to meet seismic standards within a stated period of time. The Planning Director could require that priority be given to upgrading that would reduce potential hazards which might affect adjacent structures or would reduce the risk of structural failure by improved bracing, foundation anchors or other types of retrofitting.

**EXAMPLE OF AN INCENTIVE PROGRAM FOR
SEISMIC HAZARD UPGRADING USING ZONING INCENTIVES**

This program is presented in outline form to illustrate an approach to designing provisions for zoning incentives that will encourage privately-funded seismic upgrading of existing URMs and other potentially hazardous structures.

- (1) **Purpose.** The purpose of the Seismic Hazard Upgrading Incentive Program for Unreinforced Masonry Buildings (URMs) and other potentially hazardous buildings is to provide financial incentives, consistent with State law (*requirement for mitigation programs*) to property owners and developers who undertake privately-funded upgrading of seismically hazardous structures.
- (2) **Who May Apply for an Incentive.** A property owner of a URM identified by the city as potentially hazardous, pursuant to _____ (*add applicable reference*) may request that the city grant a density or intensity (FAR) bonus or an incentive of financial value equivalent to such density/intensity bonus and a regulatory concession or incentive.
- (3) **Types of Incentives.** This section does not require the provision of direct financial incentives to finance seismic upgrading, but does provide for waiver of fees or dedication requirements. The following incentives and regulatory concessions or incentives are intended to ensure that the upgrading of seismically hazardous structures can be undertaken at a reduced cost:
 - (A) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards approved by the State Building Standards Commission, including, but not limited to, a reduction in setback and square-footage requirements and in the ratio of vehicular parking spaces that would otherwise be required.
 - (B) An increase in the maximum allowable density and/or intensity of land use, not to exceed _____ percent of the limit established by the base zoning district.
 - (C) Approval of a transfer of development rights to _____ (*specify whether the unused development rights may be transferred only to adjacent lots on the same block, to sites within the same district or to other sites or zoning districts specifically identified on the Zoning Map or in the General Plan*).

(The development rights that may be transferred could be limited to the "unused" rights on the site, and the ordinance should specify that restrictions on future development are officially recorded and bind future owners.)

- (D) Approval of mixed use zoning in conjunction with a development project if commercial, office, industrial, or other land uses will reduce the costs of a seismic upgrade for an existing structure and if the commercial, office, industrial, or other land uses are compatible with the upgrading project and the existing or planned development in the area where the proposed upgrading will take place.
 - (E) Waiver of fees for zoning permits, site plan review, building permits and *(specify other types of permits)*.
 - (F) Other regulatory incentives or concessions proposed by the developer or the city, which result in identifiable cost reductions.
- (4) Seismic Upgrade Incentive Agreement Required. After City Council approval of a request of incentives, the property owner shall be required to enter into an agreement with the city to guarantee completion of the proposed seismic upgrade. This Seismic Upgrade Incentive Agreement shall include, but not be limited to, the following provisions:
- (A) The components of the seismic upgrade shall be specified.
 - (B) The specific incentives that the city will make available to the property owner and any conditions pertaining to them shall be described.
 - (C) A commitment that seismic upgrade will be completed within a specified period of time. Security or compliance with these provisions shall be a promissory note in the amount of _____ percent of the construction costs, but not less than \$_____, secured by a deed of trust against the property.

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